

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Corwin	Team: Squad #10	CCRB Case #: 201903512	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 02/02/2019 12:30 AM	Location of Incident: 7th Avenue and 70th Street	Precinct: 68	18 Mo. SOL 8/2/2020	EO SOL 3/19/2021	
Date/Time CV Reported Tue, 04/02/2019 3:14 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Tue, 04/02/2019 3:14 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Noelle Miglino	08966	949333	068 PCT
2. POM Juan Guzman	02942	943338	068 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Juan Guzman	Abuse: Police Officer Juan Guzman stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POF Noelle Miglino	Abuse: Police Officer Noelle Miglino stopped the vehicle in which § 87(2)(b) was an occupant.	
C.POM Juan Guzman	Abuse: Police Officer Juan Guzman searched the vehicle in which § 87(2)(b) was an occupant.	
D.POF Noelle Miglino	Abuse: Police Officer Noelle Miglino searched the vehicle in which § 87(2)(b) was an occupant.	
E.POM Juan Guzman	Abuse: Police Officer Juan Guzman failed to provide § 87(2)(b) with a business card.	
F.POF Noelle Miglino	Abuse: Police Officer Noelle Miglino failed to provide § 87(2)(b) with a business card.	
§ 87(2)(g), § 87(4-b)		

Case Summary

On March 5, 2019, § 87(2)(b) filed this complaint with the CCRB over the telephone. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

At approximately 12:30 a.m. on February 02, 2019, Police Officer Juan Guzman and Police Officer Noelle Miglino, both of the 68th Precinct, stopped § 87(2)(b)'s car in the vicinity of 7th Avenue and 70th Street in Brooklyn (**Allegation A and Allegation B: Abuse of Authority: Vehicle Stop:** § 87(2)(g)). They approached the car and then asked § 87(2)(b) to step out of the car, which he did. The officers then directed § 87(2)(b) to the back of the car and both PO Guzman and PO Miglino then entered § 87(2)(b)'s car and searched it (**Allegation C and Allegation D: Abuse of Authority: Vehicle Search:** § 87(2)(g)). The officers recovered a knife from § 87(2)(b)'s vehicle, determined it was legal, and gave it back to him. Neither PO Guzman nor PO Miglino provided § 87(2)(b) with a business card at the conclusion of this interaction (**Allegation E and Allegation F: Abuse of Authority: Failure to Provide RTKA card:** § 87(2)(g)).

§ 87(2)(g), § 87(4-b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Findings and Recommendations

Allegation A: Abuse of Authority: Police Officer Juan Guzman stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation B: Abuse of Authority: Police Officer Noelle Miglino stopped the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) provided a statement at the CCRB on April 02, 2019 (**Board Review 01**). PO Miglino provided a statement at the CCRB on January 09, 2020 (**Board Review 02**) and PO Guzman provided a statement on January 30, 2020 (**Board Review 03**).

§ 87(2)(b) stated that he was in his car by himself and had just finished making a set of food deliveries. He got gas at a station on the southeast corner of 65th Street and 8th Avenue in Brooklyn and then drove south on 8th Avenue to 70th Street, where he turned right and drove over the Gowanus Expressway. He then turned left (south) on 7th Avenue, when he was pulled over by PO Miglino and PO Guzman, who were in an unmarked car. When PO Guzman and PO Miglino approached his car, PO Guzman stated that they stopped § 87(2)(b) because he was speeding. § 87(2)(b) told PO Guzman, "What's the speed limit? 25. I wasn't going over 30." § 87(2)(b) stated to the investigation that he was driving approximately 27 or 28 mph.

PO Miglino stated that she was in the front passenger seat and PO Guzman was driving. PO Miglino recalled observing § 87(2)(b) commit a traffic violation, but she could not recall exactly what violation he committed. PO Guzman and PO Miglino activated their lights and sirens and pulled § 87(2)(b) over.

PO Guzman stated that he and PO Miglino were in their police car on 65th Street and 8th Avenue, when he observed § 87(2)(b) drive by them. The speed limit was 25 mph and PO Guzman observed § 87(2)(b) driving over the speed limit. He did not have a speed meter, but it appeared to him that § 87(2)(b) was driving "very fast" and over 25 mph. § 87(2)(b) made a right turn at the

intersection of 8th Avenue from 65th Street and did not signal. PO Guzman could not recall if PO Miglino also observed the violations or if he communicated what he saw to PO Miglino. PO Guzman then made a U-turn and followed § 87(2)(b). After following § 87(2)(b) for a few blocks, PO Guzman turned on the car's lights and sirens and § 87(2)(b) pulled over.

It is undisputed that § 87(2)(b) was driving faster than 25 mph prior to the vehicle stop.

According to Section 4-06 of the New York City Department of Transportation Traffic Rules, no person shall drive a vehicle at a speed greater than twenty-five miles per hour except where official signs indicate a different maximum speed limit (**Board Review 04**).

§ 87(2)(g)

Allegation C: Abuse of Authority: Police Officer Juan Guzman searched the vehicle in which § 87(2)(b) was an occupant.

Allegation D: Abuse of Authority: Police Officer Noelle Miglino searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) stated that after telling him that he was speeding, the officers told him to step out of his car. § 87(2)(b) got out and PO Guzman escorted him to the rear of the vehicle. PO Guzman then left § 87(2)(b) alone at the rear of the vehicle and both he and PO Miglino entered the car and started searching it. § 87(2)(b) was able to see the officers searching around the seats, in the glove compartment, and in the dashboard and front console compartments. PO Guzman found a one-inch long steel folding knife in the ashtray, while PO Miglino found a pliers-shaped multitool in a dashboard compartment. § 87(2)(b) overheard PO Miglino ask PO Guzman whether the folding knife opened and whether it was legal. PO Guzman tried to open the knife but could not, and he told PO Miglino that it would not open. § 87(2)(b) explained to the investigation that the knife was very old, rusty, and can't be opened. The officers searched the vehicle for approximately 15 minutes before telling § 87(2)(b) that he could leave.

PO Miglino stated that while PO Guzman was standing by the driver's side of the car speaking with § 87(2)(b) she stood on the passenger side and was able to clearly see inside § 87(2)(b)'s open passenger window by using her flashlight to look inside. She observed an approximately three to four-inch brown knife handle with the outside of a blade protruding slightly from its side in plain sight below the radio and near the gear shift. She believed it was a folding pocketknife but was unable to tell if the knife was legal or illegal from observing it from outside the car.

PO Miglino did not recall if she spoke or communicated what she observed with PO Guzman, but she was under the impression that he observed the knife as well. PO Guzman then asked § 87(2)(b) to step out of the car. PO Miglino was under the impression that PO Guzman asked § 87(2)(b) to step out of the car so that he would not be able to reach the knife. § 87(2)(b) got out of the car and asked the officers why he needed to step out. They explained that it was because of the knife. § 87(2)(b) explained that the knife did not even open. PO Miglino did not recall asking § 87(2)(b) any questions about the knife and she did not recall PO Guzman asking him questions about the knife.

PO Miglino then entered the car through the passenger door and grabbed the knife. PO Miglino just grabbed the knife when she was inside the car. She did not remember looking in any other parts of the car. She did not look in the glove compartment of the car. She did not find any other items in

the car that she thought could possibly be a weapon. She did not find a “plier-shaped multi tool” in the car. PO Miglino did not recall PO Guzman ever entering the car.

When asked what factors led to her entering the car, PO Miglino said she entered the car, “to see if it was a switchblade, a gravity knife, or a summonsable knife.” PO Miglino stated that she was unable to determine if the knife was legal or illegal from outside the car. PO Miglino brought the knife to the back of the car where PO Guzman and § 87(2)(b) were. She was unable to even open the knife. PO Guzman and PO Miglino told § 87(2)(b) to get back in his car and PO Miglino gave him the knife back.

PO Guzman stated that after he received § 87(2)(b)'s license and registration, he and PO Miglino went to the back of § 87(2)(b)'s car to perform a check on § 87(2)(b)'s license. While they were at the back of the car, PO Miglino told PO Guzman that she saw a knife in the center console. PO Miglino did not describe the knife at all and did not specify to PO Guzman if she thought the knife was illegal or not.

PO Guzman then approached the car on the driver's side and PO Miglino approached on the passenger side. PO Guzman saw the knife, sitting in the center console, like PO Miglino had described. The knife was folded, so the blade was still inside the knife. From where PO Guzman was standing, he was able to tell that the object was a knife but was unable to see how big the knife was. When asked by the investigation if he could determine what type of knife it was, PO Guzman explained that in order for him to tell what type of knife it was, he needed to have it in his hand to perform testing to determine if the knife was a gravity knife or switchblade. When asked if he was able to tell if the knife was legal or not from where he was positioned, PO Guzman said he was not. He reiterated that he needed to have the knife in his hand to determine if it was legal or not.

PO Guzman asked § 87(2)(b) if the knife was his. § 87(2)(b) told him he used to use the knife for work, but it no longer opened. § 87(2)(b) told PO Guzman that he could even check the knife because it did not work. When asked if § 87(2)(b) ever told him he could enter the car, PO Guzman reiterated that § 87(2)(b) told him he could check the knife. PO Guzman interpreted this to mean he could get the knife and check it.

At this point, PO Guzman asked § 87(2)(b) to step out of the car because he did not want § 87(2)(b) to be able to reach the knife. § 87(2)(b) willingly got out of the car and stood to PO Guzman's right. PO Guzman stated that at this point, § 87(2)(b) reaching for the knife was no longer a threat to the officers' safety. PO Guzman then reached into the car to get the knife. He did not search any other parts of the car and the only amount of time he spent in the car was the amount of time it took him to grab the knife. The sole reason for going into § 87(2)(b)'s car was to obtain the knife to check to see if it was illegal. Once he had the knife, PO Guzman told § 87(2)(b) to go to the back of the car.

PO Guzman then checked the knife and he was unable to open it. The blade seemed to be glued to the handle. PO Guzman stated that there was no point in testing it to see if it was a gravity knife because it would not open. Additionally, because the knife could not open, it was not illegal. PO Guzman told § 87(2)(b) to sit back in the car and gave him the knife back. PO Guzman stated that PO Miglino never entered § 87(2)(b)'s car.

§ 87(2)(g)

§ 87(2)(g)

Although the entry into a citizens' automobile by a police officer is a "significant encroachment" upon that citizen's privacy interest, this interest is outweighed by the "plain view" doctrine. This doctrine is based on the legal concept that the police should be permitted to seize incriminating evidence in plain view if the following three requirements are met: (i) the police are lawfully in a position to observe the item; (ii) the police have lawful access to the item itself when they seize it; and (iii) the incriminating character of the seized item is immediately apparent. (People v Hodge, 2005 N.Y. Misc. LEXIS 3441 [Sup Ct, Kings County Apr. 22, 2005, No. 2476/04]) (**Board Review 05**).

Absent probable cause, it is unlawful for a police officer to invade the interior of a stopped car once the suspects have been removed and patted down without incident and any immediate threat to safety thereby eliminated. The likelihood of a weapon in the car must be substantial and the danger to the officer's safety "actual and specific" in order to justify an intrusion into the suspects' car. People v Carvey, 89 NY2d 707 [1997] (**Board Review 06**).

§ 87(2)(g)

Allegation E: Abuse of Authority: Police Officer Juan Guzman failed to provide § 87(2)(b) with a business card.

Allegation F: Abuse of Authority: Police Officer Noelle Miglino failed to provide § 87(2)(b) with a business card.

It was undisputed that at the conclusion of the car stop, neither PO Guzman nor PO Miglino provided § 87(2)(b) with their business cards. Neither PO Miglino nor PO Guzman provided an explanation or reason for why they did not provide § 87(2)(b) with a business card.

According to Section 14-174 of the New York City Administrative Code, as well as Patrol Guide Procedure 203-09, police officers are required to offer a business card to individuals after searches of persons or property, including vehicles (**Board Review 07** and **Board review 08**).

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

[REDACTED]

[REDACTED]

[REDACTED]

Relationship Duration	Percentage of Respondents
Less than 1 year	10%
1 to 2 years	85%
3 to 4 years	10%
5 to 6 years	100%
7 to 8 years	95%
9 years or more	15%

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Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to eight CCRB investigations and has been named a victim in 22 allegations (**Board Review 12**).
 - § 87(2)(b)
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- PO Guzman has been a member of service for 13 years and has been subject in four complaints and seven allegations of which one was substantiated.
 - CCRB Case 201602281 involved a substantiated discourtesy against PO Guzman. The board recommended command level instructions and the NYPD imposed instructions.

- § 87(2)(g) [REDACTED].
- PO Miglino has been a member of service for nine years and has been a subject in two CCRB complaints and four allegations of which none were substantiated.
 - § 87(2)(g) [REDACTED].

Mediation, Civil and Criminal Histories

- On May 13, 2019 this case was sent to mediation and on July 22, 2019, the case was returned to investigation § 87(2)(g) [REDACTED].
- A request for any Notice of Claim regarding this incident has been submitted to the New York City Comptroller's Officer, and the results will be added to the case file upon receipt.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
[REDACTED]
[REDACTED]

Squad No.: 10

Investigator:	_____ Signature	_____ Print Title & Name	_____ Date
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Squad Leader:	_____ Signature	_____ Print Title & Name	_____ Date
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Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date
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